

ENTERED

October 22, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.,

Debtor.¹

BRAZOS ELECTRIC POWER
COOPERATIVE, INC. AND OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS,

Plaintiff/Plaintiff-Intervenor,

v.

ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC.,

Defendant.

Chapter 11

Case No. 21-30725 (DRJ)

Adv. Proc. No. 21-03863 (DRJ)

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION
TO DISMISS AND FOR ABSTENTION
[Relates to Dkt. No. 23]**

Upon consideration of Electric Reliability Council of Texas, Inc.'s ("Defendant") *Motion to Dismiss and for Abstention* (the "Motion"), any responses filed in connection with the Motion, and all arguments of counsel and evidence admitted at the hearing on the Motion (the "Hearing"); the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number is: Brazos Electric Power Cooperative, Inc. (4729). Additional information regarding this case may be obtained on the website of the Debtor's claims and noticing agent at <http://cases.stretto.com/Brazos>. The Debtor's address is 7616 Bagby Avenue, Waco, TX 76712.

venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation and for the reasons stated on the record at the Hearing, it is

HEREBY ORDERED THAT:

1. Defendant's motion to dismiss Count 1 of the Complaint based on Federal Rule of Civil Procedure 12(b)(6) is **GRANTED**. Count 1 of the Complaint is dismissed, without prejudice to replead only that Count. If Plaintiffs choose to replead, they shall file an amended complaint no later than October 25, 2021.
2. Defendant's motion to dismiss Count 3 of the Complaint is **DENIED**.
3. Defendant's motion to dismiss Counts 1 through 5 of the Complaint based on Federal Rules of Civil Procedure 12(b)(7) and 19 is **DENIED**.
4. Defendant's motion to abstain is **DENIED**.

Signed: October 22, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

SUBMITTED BY:

<p>NORTON ROSE FULBRIGHT US LLP</p> <p>By: <u>/s/ Jason L. Boland</u> Jason L. Boland (SBT 24040542) Julie G. Harrison (SBT 24092434) Maria Mokrzycka (SBT 24119994) 1301 McKinney Street, Suite 5100 Houston, TX 77010 Telephone: (713) 651-5151 Facsimile: (713) 651-5246 Email: jason.boland@nortonrosefulbright.com Email: julie.harrison@nortonrosefulbright.com Email: maria.mokrzycka@nortonrosefulbright.com</p> <p><i>Counsel for the Debtor and Debtor in Possession</i></p> <p>-and-</p> <p>EVERSHEDS SUTHERLAND (US) LLP</p> <p>Lino Mendiola (SBT 00791248) Michael Boldt (SBT 24064918) Jim Silliman (SBT 24081416) One American Center 600 Congress Ave., Suite 2000 Austin, TX 78701 Telephone: (512) 721-2700 Facsimile: (512) 721-2656 Email: linomendiola@eversheds-sutherland.us Email: michaelboldt@eversheds-sutherland.us</p> <p><i>Special Counsel for the Debtor and Debtor in Possession</i></p> <p>-and-</p> <p>O'MELVENY & MYERS LLP</p> <p>Louis R. Strubeck, Jr. (SBT 19425600) 2501 North Harwood Street Dallas, Texas 75201 Telephone: (972) 360-1925 Email: lstrubeck@omm.com</p> <p><i>Co-Counsel for the Debtor and Debtor in Possession</i></p>	<p>PORTER HEDGES LLP</p> <p>By: <u>/s/ John F. Higgins</u> John F. Higgins (SBT 09597500) Eric D. Wade (SBT 00794802) Heather K. Hatfield (SBT 24050730) M. Shane Johnson (SBT 24083263) Megan Young-John (SBT 24088700) 1000 Main Street, 36th Floor Houston, Texas 77002 Telephone: (713) 226-6000 Email: jhiggins@porterhedges.com Email: ewade@porterhedges.com Email: hhatfield@porterhedges.com Email: sjohnson@porterhedges.com Email: myoung-john@porterhedges.com</p> <p>-and-</p> <p>KRAMER LEVIN NAFTALIS & FRANKEL LLP</p> <p>Thomas Moers Mayer (admitted <i>pro hac vice</i>) Amy Caton (admitted <i>pro hac vice</i>) Jennifer Sharret (admitted <i>pro hac vice</i>) 1177 Avenue of the Americas New York, New York 10036 Telephone: (212) 715-9100 Facsimile: (212) 715-8000 Email: tmayer@kramerlevin.com Email: acaton@kramerlevin.com Email: jsharret@kramerlevin.com</p> <p><i>Counsel for the Official Committee of Unsecured Creditors</i></p>
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APPROVED AS TO FORM ONLY:

MUNSCH HARDT KOPF & HARR, P.C. By: <u>/s/ Jamil N. Alibhai</u> Kevin M. Lippman (SBT 00784479) Deborah Perry (SBT 24002755) Jamil N. Alibhai (SBT 00793248) 3800 Ross Tower 500 N. Akard Street Dallas, Texas 75201 Telephone: (214) 855-7500 Facsimile: (214) 855-7584 Email: klippman@munsch.com Email: dperry@munsch.com Email: jalibhai@munsch.com <i>Counsel for Electric Reliability Council of Texas, Inc.</i>	KEN PAXTON Attorney General of Texas BRENT WEBSTER First Assistant Attorney General GRANT DORFMAN Deputy First Assistant Attorney General SHAWN E. COWLES Deputy Attorney General for Civil Litigation SEAN O'NEILL Assistant Attorney General Deputy Chief, Bankruptcy & Collections Division By: <u>/s/ Jason B. Binford</u> JASON B. BINFORD Texas State Bar No. 24045499 Southern Dist. Bar No. 574720 LAYLA D. MILLIGAN Texas State Bar No. 24026015 Southern Dist. Bar No. 38000 Office of the Attorney General of Texas Bankruptcy & Collections Division P. O. Box 12548 MC008 Austin, Texas 78711-2548 Telephone: (512) 463-2173 Facsimile: (512) 936-1409 jason.binford@oag.texas.gov layla.milligan@oag.texas.gov ATTORNEYS FOR THE PUBLIC UTILITY COMMISSION OF TEXAS
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